Idaho Department of Environmental Quality

Draft §401 Water Quality Certification

January 18, 2016

404 Permit Application Number: NWW-2007-00235; Johnson Bank Stabilization Project

Applicant/Authorized Agent: Schindler Johnson Family Trust; authorized agent Kevin Dreier, Lippert Excavation and Pipeline, Inc.

Project Location: T57N, R1W, Section 4; latitude 48º 18' 44" longitude 116º 26' 43"'

Receiving Water Body: Pend Oreille Lake

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review activities receiving Section 404 dredge and fill permits and issue water quality certification decisions.

Based upon our review of the joint application for permit and biological assessment, received on December 29, 2015, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the activity will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

Project Description

The applicant proposes to place 940 cubic yards of angular riprap into Pend Oreille Lake to stabilize 1,220 feet of eroded shoreline. The proposed project is located at 729 Sunnyside Road near Hope, Idaho. To protect water quality this project is proposed to be constructed during low pool when the shoreline is dry. A silt fence or straw wattles are proposed to be placed above the low water level to protect the lake from construction related sediment. Willow plantings will be planted along the entire length of the project along with revegetation of disturbed areas. The certification also requires certain conditions to further ensure protection of water quality.

Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- Tier 1 Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier 1 review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier 2 Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- Tier 3 Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier 1 protection for that use, unless specific circumstances warranting Tier 2 protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

Pollutants of Concern

The primary pollutants of concern for this project are sediment and phosphorus. As part of the Section 401 water quality certification, DEQ is requiring the applicant comply with various conditions to protect water quality and to meet Idaho WQS, including the water quality criteria applicable to both these pollutants.

Receiving Water Body Level of Protection

This project is located on Pend Oreille Lake within the Pend Oreille Lake Subbasin assessment unit (AU) ID17010214PN018L_0L (Pend Oreille Lake). This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, domestic water supply, primary contact recreation. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

According to DEQ's 2012 Integrated Report, this AU is not fully supporting one or more of its assessed uses. The aquatic life and secondary contact recreation uses are not fully supported. Causes of impairment include mercury, other flow regime alterations and phosphorus. As such, DEQ will provide Tier 1 protection (IDAPA 58.01.02.051.01) for the aquatic life use. Although primary contact recreation is designated it remains unassessed, however, secondary contact recreation is impaired by mercury. DEQ must provide an appropriate level of protection for primary contact recreation use using information available at this time (IDAPA 58.01.02.052.05.c).

Protection and Maintenance of Existing Uses (Tier 1 Protection)

As noted above, a Tier 1 review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. The numeric and narrative criteria in the WQS are set at levels that ensure protection of designated beneficial uses.

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a total maximum daily load (TMDL) must be prepared for those pollutants causing impairment. Once a TMDL is developed, discharges of causative pollutants shall be consistent with the allocations in the TMDL (IDAPA 58.01.02.055.05). Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04).

During the construction phase, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) directed toward reducing erosion and minimizing turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented, which will minimize or prevent future sediment contributions from the project area. As long as the project is conducted in accordance with the provisions of the project plans, Section 404 permit, and conditions of this certification, then there is reasonable assurance the project will comply with the state's numeric and narrative criteria. These criteria are set at levels that protect and maintain designated and existing beneficial uses. In addition, the project will be consistent with the *Total Maximum Daily Load (TMDL) for Nutrients for the Nearshore Waters of Pend Oreille Lake, Idaho*. The project has best management practices designed to prevent the movement of sediment from the construction project into the lake. Sediments often contain phosphorus and by preventing its movement into the lake, this project will not contribute to phosphorus enrichment and is consistent with the TMDL. Willow plantings along the entire length of the project will also further stabilize the shoreline and prevent erosion.

Salmonid spawning is an additional use. By constructing this project during low pool on the dewatered shoreline there should be no impact to salmonid spawning. By reducing lake sedimentation from the eroding shoreline there may be some value realized by this project in reducing the amount of suspended sediment that can fill spaces in lakebed gravels necessary for successful spawning. There is no available information indicating the presence of any other existing beneficial uses aside from those that are already designated and discussed above; therefore, the permit ensures that the level of water quality necessary to protect both designated and existing uses is maintained and protected in compliance with the Tier 1 provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

High-Quality Waters (Tier 2 Protection)

The Pend Oreille Lake is considered high quality for primary contact recreation. As such, the water quality relevant to this use must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to primary contact recreation uses of the

Pend Oreille Lake (IDAPA 58.01.02.052.06). These pollutants include the following: phosphorus which is bound to sediment particles. To prevent sediment and its associated phosphorus from entering Pend Oreille Lake, the project will be constructed during low pool along a dry shoreline. Best management practices as described in the Project Description section should prevent the movement of sediment and imported materials into the lake. Conditions in the certification also require best management practices for staged fill material and actions to be taken if visual monitoring of the lake reveals sediment plumes caused by the project. The biological assessment indicates all disturbed areas will be revegetated and the shoreline planted to willows to prevent long term erosion issues. Other best management practices such as the design of the riprap should greatly reduce shoreline erosion and thus the amount of phosphorus entering the lake. As such, the project complies with IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.06.

The provisions in the 404 permit, coupled with the conditions of this certification, ensure that degradation the Pend Oreille Lake will not occur. Therefore, DEQ concludes that this project complies with the Tier 2 provisions of Idaho's WQS (IDAPA 58.01.02.051.02; 58.01.02.052.06 and 58.01.02.052.08).

Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

General Conditions

1. This certification is conditioned upon the requirement that any modification (e.g., change in BMPs, work windows, etc.) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.
2. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that, due to changes in relevant circumstances—including without limitation, changes in project activities, the characteristics of the receiving water bodies, or state WQS—there is no longer reasonable assurance of compliance with WQS or other appropriate requirements of state law.
3. If ownership of the project changes, the certification holder shall notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to another person or party. The new owner/operator shall request, in writing, the transfer of this water quality certification to his/her name.
4. A copy of this certification must be kept on the job site and readily available for review by any contractor working on the project and any federal, state, or local government personnel.
5. Project areas shall be clearly identified in the field prior to initiating land-disturbing activities to ensure avoidance of impacts to waters of the state beyond project footprints.

6. The applicant shall provide access to the project site and all mitigation sites upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.
7. The applicant is responsible for all work done by contractors and must ensure the contractors are informed of and follow all the conditions described in this certification and the Section 404 permit.

Fill Material

8. Fill material shall be free of organic and easily suspended fine material.
9. Fill material shall not be placed in a location or in a manner that impairs surface or subsurface water flow into or out of any wetland area.
10. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.
11. All temporary fills shall be removed in their entirety on or before construction completion.
12. Excavated or staged fill material must be placed so it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state.

Erosion and Sediment Control

13. BMPs for sediment and erosion control suitable to prevent exceedances of state WQS shall be selected and installed before starting construction at the site. One resource that may be used in evaluating appropriate BMPs is DEQ's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties*, available online at http://www.deq.idaho.gov/media/494058-entire.pdf. Other resources may also be used for selecting appropriate BMPs.
14. Permanent erosion and sediment control measures shall be installed in a manner that will provide long-term sediment and erosion control to prevent excess sediment from entering waters of the state.
15. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.

Turbidity

16. All practical BMPs on disturbed banks and within the waters of the state must be implemented to minimize turbidity. Visual observation is acceptable to determine whether BMPs are functioning properly. If a plume is observed, the project may be causing an exceedance of WQS and the permittee must inspect the condition of the projects BMPs. If the BMPs appear to be functioning to their fullest capability, then the permittee must modify the activity or implement additional BMPs (this may also include modifying existing BMPs) to eliminate the source of turbidity.

In-water Work

17. In-water work is not authorized by this certification.

Vegetation Protection and Restoration

18. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
19. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.

Management of Hazardous or Deleterious Materials

20. Petroleum products and hazardous, toxic, and/or deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the state. Adequate measures and controls must be in place to ensure that those materials will not enter waters of the state as a result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.
21. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
22. Daily inspections of all fluid systems on equipment to be used in or near waters of the state shall be done to ensure no leaks or potential leaks exist prior to equipment use.
23. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
24. Equipment and machinery shall be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment prior to entering a water of the state. Cleaning must be sufficient enough to prevent the introduction of invasive species. Any wastewater or wash water must not be allowed to enter a water of the state.
25. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
26. In accordance with IDAPA 58.01.02.850, in the event of an unauthorized release of hazardous material to state waters or to land such that there is a likelihood that it will enter state waters, the responsible persons in charge must
    a. Make every reasonable effort to abate and stop a continuing spill.
    b. Make every reasonable effort to contain spilled material in such a manner that it will not reach surface or ground waters of the state.
    c. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.

Right to Appeal Final Certification

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the "Rules of Administrative Procedure before the Board of Environmental Quality" (IDAPA 58.01.23), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to June Bergquist at june.bergquist@deq.idaho.gov or by phone at (208) 666-4605.

DRAFT

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